

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**D. Gary Drake,**  
Petitioner-Appellant,

v.

**Pottawattamie County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 09E-78-1783**  
**Parcel No. 7544 27 385 002**

On March 7, 2011, the above-captioned appeal came on for consideration before the State of Iowa Property Assessment Appeal Board. The appeal was conducted pursuant to Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant D. Gary Drake requested that the appeal be considered without hearing and designated Monte Bowman of AVIARAS, Ralston, Nebraska as his legal representative. The Respondent-Appellee, Pottawattamie County Board of Review, designated Assistant County Attorney Leanne A. Gifford as its legal representative. Both parties submitted evidence in support of their position. The Appeal Board now having examined the entire record, and being fully advised, finds:

***Findings of Fact***

D. Gary Drake, owner of a commercial property located at 3011 West Broadway, Council Bluffs, Iowa, appeals from the Pottawattamie County Board of Review decision reassessing his property. The parcel consists of a one-story, 4000 square-foot retail store built in 1978. The parcel is also improved by a billboard and 6800 square feet of concrete parking. The building is in normal condition. The property is operated as a business known as McGill Travel on a 0.25 acre site.

The real estate was classified as commercial on the assessment of January 1, 2009, and valued at \$152,400, representing \$52,000 in land value and \$100,400 in improvement value. Subsequently,

the Iowa Department of Revenue issued a 15% equalization order for commercial property in the County. The application of the equalization order increased the assessment of the property to \$175,260, representing \$59,800 in land value and \$115,460 in improvement value.

Drake protested the application of the equalization order to the Board of Review asserting the order resulted in the property being valued in excess of that permitted under Iowa Code section 441.21. He objected to the increase in value imposed as a result of the 2009 equalization order and seeks to reverse the application of the order. The Board of Review denied the appeal indicating Drake's evidence was not sufficient to prove the assessment was excessive.

Drake then appealed to this Board reasserting his claim. He disagrees with the increased assessment resulting from the application of the equalization order and seeks relief of \$22,860 for a total valuation of \$152,400, allocated \$52,000 to land and \$100,400 to improvement value.

On appeal, Drake challenges the equalization order because it incorporated data from abnormal sales, which he claims should be excluded from the state assessment/sales ratio study under Iowa Department of Revenue guidelines. Drake provided exhibits showing sales with a building removal, a corporate merger, and contract forfeiture; all listed as abnormal under the Department of Revenue *Abnormal Sales Conditions Guidelines*. Drake believes that excluding these sales could result in a variance of 5% or less, which would eliminate the equalization order, or a variance of less than 15%, which would reduce the order's percentage increase.

A sales/assessment ratio study compares the sales prices of properties to their assessed valuation and is used to determine whether equalization is necessary in order to adjust to actual value the assessed valuation of a class of property. Iowa Code § 441.47; Iowa Admin. Code r. 701-71.12(3).

We note the record lacks evidence to show how the equalization order was calculated by the Department of Revenue and the measure of central tendency used in the assessment/sales ratio study.

Further, we are uncertain from the record whether appraisals were used to supplement the ratio study as provided in Iowa Administrative Code rules 701-71.12(3).

Drake relies on *Hastings v. Iowa Department of Revenue*, 417 N.W.2d 214 (Iowa 1987), for legal authority to challenge the validity of the equalization order based on the alleged use of impermissible sales data. Under Iowa code section 441.48, the director of the Department of Revenue gives notice to the county auditor of the proposed equalization percentage and provides for protest by the county or assessing jurisdiction to the State Board of Tax Review. This right of public officials to protest equalization orders does not extend to taxpayers appearing before this Board. This Board does not have statutory authority to address a taxpayer protest questioning the validity of the underlying equalization order. Therefore, we lack jurisdiction to address the issue raised by Drake. Protests to the Board of Review and appeals to this Board are limited to whether the application of the equalization order resulted in the subject property being valued for more than one hundred percent of its actual value. § 441.49.

The Board of Review submitted admissions completed by Drake confirming that the basis of the appeal is a challenge to the 2009 equalization order for commercial property based on the use of abnormal sales in the assessment/sales ratio study and Drake did not intend to produce evidence of the subject property's fair market value.

Drake did not submit any evidence to show the fair market value of the subject property. Viewing the evidence as a whole, we are persuaded the preponderance of the evidence failed to support Drake's claim the application of the equalization order resulted in an excessive assessment.

### ***Conclusions of Law***

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act



apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

The basis of an equalization appeal is that the property assessment, if adjusted by the equalization order issued by the Department, will result in a greater value than permitted under Iowa Code section 441.21. § 441.49. The Appeal Board may adjust all or part of the percentage increased ordered by adjusting the actual value of the property under protest to 100% of the actual value. *Id.* Any adjustment so determined by the Appeal Board shall not exceed the percentage increase provided for in the equalization order. *Id.* Because an equalization appeal considers whether application of the equalization order results in an assessment that is more than fair market value of the property, we only consider the application of this claim and no other grounds asserted by the appellant.

The Appeal Board finds the evidence does not support a determination the application of the equalization order resulted in an assessment in excess of the subject property's fair market value. We affirm the assessment of the Drake property, as determined by the November 2009 Pottawattamie County Board of Review decision.

THE APPEAL BOARD ORDERS the property assessment of \$175,260, representing \$59,800 in land value and \$115,460 in improvement value, as of January 1, 2009, set by the Pottawattamie County Board of Review is affirmed.

Dated this 3 day of May 2011.

Jacqueline Rypma  
Jacqueline Rypma, Presiding Officer

Richard Stradley  
Richard Stradley, Board Member

Karen Oberman  
Karen Oberman, Board Chair

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>5-3</u> , 201 <u>1</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>